

# Daily Journal

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## Jackie Kretizman, Brian Senit v. Mercury Casualty Company

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Case number: BC654909

Verdict – **Defense**

### Facts

Plaintiffs contended that Mercury Casualty Insurance Company breached the insurance contract with them and breached the covenant of good faith and fair dealing.

### Contentions

**PLAINTIFFS' CONTENTIONS:** Plaintiffs contended that Mercury failed to do a proper and timely investigation such that a water leak plaintiffs claimed had occurred during a storm was allowed to penetrate the walls which created an asbestos problem and a mold problem. Eventually, they had an expert come in who said they had to take down their ceilings and their walls, so all drywall was pulled out and the house is now down to the studs.

Plaintiffs also alleged they had breathing problems and that they lost wages. They claimed punitive damages against Mercury for failing to properly care for the insureds even though they had been an insured of Mercury for 17 years.

Further, they asserted that because of the water leak and the failure to take care of water intrusion they then had to rebuild their house and now it was much more expensive to do so as well as the house now needed code upgrades because it has been a number of years since the house was remodeled.

Plaintiffs' expert asserted that Mercury didn't act properly towards plaintiffs. They also asserted through their expert asbestos abatement person that they were required to take down the walls and ceilings and they wouldn't have been forced to do so except for Mercury's recalcitrance in rebuilding the home and remodeling and repairing their home.

**DEFENDANT'S CONTENTIONS:** Defendant contended that they had tried to work with plaintiff and had repaired what they believed was due to a water intrusion through the ceiling skylight but the rest of what was being claimed was not due to the leak through the skylight. Defendant also asserted that plaintiffs had failed to allow inspections or meet with contractors on a timely basis and that the fault in not moving the claim along fell with plaintiffs and not with Mercury. Mercury also asserted that while plaintiff claimed there was water intrusion for this case in January 2015, plaintiffs failed to notify Mercury for more than 30 days and there had been water intrusion within a year and a half before, which plaintiffs failed to disclose. Plaintiffs had claimed water intrusion has flooded the house in a call to their home to their home warranty company yet when confronted with that at trial said it was an exaggeration. They also conceded on cross that they exaggerated the claim to Mercury in order to try

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to get the repairs done. The defense experts for Mercury asserted that Mercury had been reasonable in all their attempts to resolve the case. Defense experts were patient with plaintiff who was very assertive and used colorful language with some of the claims personnel. Defendant's contractor expert asserted that there was a lot of maintenance problems in the house and outside the house and that there was poor maintenance done on the house and there was a number of repairs that were needed which plaintiffs were now trying to claim was due to the water intrusion.

Mercury in closing argument asserted that plaintiffs had failed to disclose very important facts concerning prior water intrusion

#### Settlement Discussions

Defense offered \$800,000 prior to trial. Plaintiff's demand before trial was approximately \$28 million with punitive damages claimed.

#### Result

The jury rendered a defense verdict.

#### Other Information

Defendant claimed costs in excess of \$400,000.

#### Deliberation

45 minutes